

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

EMANUELE STEVENS, individually and on )  
behalf of all others similarly situated, )

Plaintiff, )

v. )

CASE NO. 7:22-cv-00802-NSR

PEPSICO INC., BOTTLING GROUP, LLC, )  
CB MANUFACTURING COMPANY, INC., )  
FL TRANSPORTATIONS, INC., FRITO- )  
LAY, INC., GOLDEN GRAIN, INC., )  
GRAYHAWK LEASING, LLC, JUICE )  
TRANSPORT, INC., NEW BERN )  
TRANSPORT CORPORATION, PEPSI )  
NORTHWEST BEVERAGES, LLC, PEPSI- )  
COLA SALES & DISTRIBUTION, INC., )  
PEPSI-COLA BEVERAGE SALES, LLC, )  
PEPSICO SALES, INC., QUAKER )  
MANUFACTURING, LLC, ROLLING )  
FRITO-LAY SALES, LP, SVC )  
MANUFACTURING, INC., TROPICANA )  
MANUFACTURING CO., TROPICANA )  
PRODUCT SALES, INC., TROPICANA )  
SERVICES, INC., )

Defendants. )

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MOISES MADRIZ AND RODNEY )  
ULLOA, individually and on behalf of all )  
others similarly situated, )

Plaintiff, )

v. )

CASE NO. 1:22-cv-04851-NSR

PEPSICO, INC.; NAKED JUICE CO.; )  
NAKED JUICE CO. OF GLENDORA, INC.; )  
TROPICANA PRODUCTS, INC.; and )  
TROPICANA SERVICES, INC., )

Defendants. )

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_____ RICARDO VIDAUD, individually and on behalf of all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. 1:22-cv-04850-NSR
	)	
PEPSICO INC.,	)	
	)	
Defendant.	)	
_____ SETH MARSHALL and MATTHEW WHITE, individually and on behalf of all others similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CASE NO. 7:22-cv-02370-NSR
	)	
PEPSICO INC., BOTTLING GROUP, LLC, and CB MANUFACTURING COMPANY, INC.,	)	
	)	
Defendants.	)	
_____ TYRELL KING, individually and on behalf of all others similarly situated,	)	CASE NO. 4:22-cv-00360-KGB
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
PEPSICO INC.,	)	
	)	
Defendant.	)	
_____ KENNETHA MITCHELL, individually and on behalf of all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. 7:22-cv-04555-NSR
	)	
PEPSICO INC.,	)	
	)	
Defendant.	)	
_____	)	

_____	)	
DONEDWARD WHITE, individually and on	)	
behalf of all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. 7:22-cv-05198-NSR
	)	
PEPSICO INC.,	)	
	)	
Defendant.	)	
_____	)	
JAMAL WINGER, individually and on	)	
behalf of all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. 1:22-cv-04828-NSR
	)	
THE QUAKER OATS CO.,	)	
	)	
Defendant.	)	
_____	)	
ALLISON POULSON, individually and on	)	
behalf of all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. 7:22-cv-05196-NSR
	)	
PEPSICO INC. d/b/a PFS and FRITO-LAY,	)	
INC.	)	
	)	
Defendants.	)	
_____	)	
ROBNEY IRVING-MILLEN TREE,	)	
individually and on behalf of all others	)	
similarly situated,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. 1:22-cv-04784-NSR
	)	
PEPSICO INC.,	)	
	)	
Defendant.	)	
_____	)	

TRACY ELLIS,	)	
individually and on behalf of all others	)	
similarly situated,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. 7:22-cv-05200-NSR
	)	
PEPSICO INC.,	)	
	)	
Defendant.	)	
	)	
THOMAS PARRISH, individually and on	)	
behalf of all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. 7:22-cv-04556-NSR
	)	
FRITO-LAY NORTH AMERICA, INC. and	)	
PEPSICO, INC.	)	
	)	
Defendants.	)	
	)	
DEVIN DROBSCH, individually and on	)	
behalf of all others similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CASE NO. 7:22-cv-04216-NSR
	)	
PEPSICO INC.,	)	
	)	
Defendant.	)	
	)	
JOSHUA SMITH, individually and on behalf	)	
of all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. 7:22-cv-04238-NSR
	)	
PEPSICO INC.,	)	
	)	
Defendant.	)	
	)	

JACOB TSCHUDY, individually and on	)	
behalf of all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. 7:22-cv-04212-NSR
	)	
PEPSICO INC.,	)	
	)	
Defendant.	)	
	)	

**[PROPOSED] PRELIMINARY APPROVAL ORDER**

WHEREAS, Plaintiffs Emanuele Stevens, Moises Madriz, Rodney Ulloa, Ricardo Vidaud, Jorge Mendoza, Seth Marshall, Matthew White, Tyrell King, Kennetha Mitchell, DonEdward White, Jamal Winger, Allison Poulson, Rodney Irving-Millentree, Tracy Ellis, Thomas Parrish, Devin Dobsch, Joshua Smith, and Jacob Tschudy (“Plaintiffs”) and Defendants PepsiCo, Inc. (“PepsiCo”), New Tiger LLC (“New Tiger”), and their various respective divisions and subsidiaries, a list of which is attached hereto as Exhibit A (collectively, “Defendants”) (Plaintiffs and Defendants together, the “Parties”) have entered into a Stipulation and Settlement Agreement (“Settlement Agreement”) intended to resolve the claims asserted in this action that Defendants failed to timely, accurately, and/or fully pay Plaintiffs and Defendants’ other non-exempt employees employed in the United States for all hours worked during the seventeen pay periods between December 5, 2021 and April 8, 2022 (the “Class Period”) and all other related claims arising under the Fair Labor Standards Act and state wage and hour related laws (the “Claims”), due to their payroll provider, the Ultimate Kronos Group (“Kronos”) experiencing a cybersecurity incident that began on or about December 11, 2021 through February 12, 2022 (the “Kronos Outage”); and

WHEREAS, the Settlement Agreement, together with its Exhibits, sets forth the terms and conditions for a proposed settlement and dismissal with prejudice of these Claims against Defendants; and

WHEREAS, for purposes of settlement only, Plaintiffs seek certification of the following opt-out settlement class and subclasses pursuant to Fed. R. Civ. P. 23:

**NATIONAL CLASS<sup>1</sup>:** All current and former employees of Defendants in the United States during the seventeen weekly pay periods between December 5, 2021, and April 8, 2022, who were impacted by the Kronos Outage. For purposes of the Settlement Agreement, an employee was impacted by the Kronos Outage if that employee received an inaccurate pay stub or inaccurate compensation at any time during the Class Period, regardless of whether that employee's compensation paid during the the Kronos Outage as compared to compensation owed for the Kronos Outage timeperiod resulted in a net positive (overpayment), net neutral, or net negative (underpayment) to that employee.

**NEW YORK SUBCLASS:**

All current and former employees of Defendants in New York during the seventeen pay periods between December 5, 2021, and April 8, 2022, who were impacted by the Kronos Outage. For purposes of the Settlement Agreement, an employee was impacted by the Kronos Outage if that employee received an inaccurate pay stub or inaccurate compensation at any time during the Class Period, regardless of whether that employee's compensation paid during the the Kronos Outage as compared to compensation owed for the Kronos Outage timeperiod resulted in a net positive (overpayment), net neutral, or net negative (underpayment) to that employee.

**CALIFORNIA SUBCLASS:**

All current and former employees of Defendants in California during the seventeen weekly pay periods between December 5, 2021, and April 8, 2022, who were impacted by the Kronos Outage. For purposes of the Settlement Agreement, an employee was impacted by the Kronos Outage if that employee received an inaccurate pay stub or inaccurate compensation at any time during the Class Period, regardless of whether that employee's compensation paid during the the Kronos Outage as compared to compensation owed for the Kronos Outage timeperiod resulted in a net positive (overpayment), net neutral, or net negative (underpayment) to that employee.

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<sup>1</sup> As such term is defined in the Settlement Agreement.

WHEREAS, for purposes of settlement only, Plaintiffs also seek conditional certification of the following opt-in collective pursuant to Section 16(b) of the Federal Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b) (the “FLSA Collective”):

All current and former employees of Defendants in the United States during the seventeen weekly pay periods between December 5, 2021, and April 8, 2022, who were impacted by the Kronos Outage. For purposes of the Settlement Agreement, an employee was impacted by the Kronos Outage if that employee received an inaccurate pay stub or inaccurate compensation at any time during the Class Period, regardless of whether that employee’s compensation paid during the the Kronos Outage as compared to compensation owed for the Kronos Outage timeperiod resulted in a net positive (overpayment), net neutral, or net negative (underpayment) to that employee.

WHEREAS, the Court has before it Plaintiffs’ Unopposed Motion for Preliminary Approval of Class and Collective Action Settlement (“Plaintiffs’ Motion”) and papers in support thereof, together with the Settlement Agreement and its Exhibits; and

WHEREAS, the Court is satisfied that the terms and conditions set forth in the Settlement Agreement are the result of good faith, arms’ length settlement negotiations between competent and experienced counsel for both the Plaintiffs and Defendants; and

WHEREAS, having reviewed and considered the Settlement Agreement and accompanying Exhibits, Plaintiffs’ Motion, and the declaration filed in support of Plaintiffs’ Motion, the Court makes the findings and grants the relief set forth below.

**IT IS HEREBY ORDERED AS FOLLOWS:**

**Jurisdiction, Preliminary Approval of the Settlement Agreement, Certification of the National Class and California and New York Subclasses for Settlement Purposes, Appointment of Class Representatives and Class Counsel, and Conditional Certification of the FLSA Collective**

1. Capitalized terms used in this Order have the meanings assigned to them in the Settlement Agreement and this Order.

2. The Court has jurisdiction over the subject matter of this lawsuit (the “Litigation”), Plaintiffs, the members of the FLSA Collective, National Class and New York and California Subclasses, Defendants, and the implementation and administration of the Settlement Agreement.

3. The Court preliminarily adjudges the terms of the Settlement Agreement to be fair, reasonable and adequate, and in the best interests of Plaintiffs and members of the FLSA Collective, National Class, and New York and California Subclasses, and directs consummation of the terms.

4. The Court hereby preliminarily finds that with respect to the National Class and the New York and California Subclasses:

a. The numerosity requirements of Rule 23(a)(1) have been met because there are 69,809 National Class Members, there are 2,766 New York Subclass Members, and there are 7,262 California Subclass members. Plaintiffs Matthew White and Thomas Parrish are the proposed representatives for the New York Subclass (“New York Plaintiffs”) and Plaintiffs Ricardo Vidaud, Moises Madriz, Rodney Ulloa, and Jorge Mendoza are the proposed representatives for the California Subclass (“California Plaintiffs”).

b. The commonality requirements of Rule 23(a)(2) have been met because Plaintiffs and the National Class Members, New York Plaintiffs and the New York Subclass Members, and California Plaintiffs and the California Subclass Members, all share common issues of fact and law, including whether Defendants’ alleged failure to accurately and timely pay each of them violated state law requirements for the timely payment of wages and for providing accurate wage statements and whether they are entitled to additional liquidated damages or penalties.

c. The typicality requirements of Rule 23(a)(3) have been met because Plaintiffs’ claims, the New York Plaintiffs’ claims, and California Plaintiffs’ claims for overtime

pay arise from the same factual and legal circumstances that form the bases of National Class Members', New York Subclass Members' and California Subclass Members' claims, respectively.

d. The adequacy requirements of Rule 23(a)(4) have been met because Plaintiffs', the New York Plaintiffs', and the California Plaintiffs' interests are not antagonistic or at odds with, respectively, the National Class Members' interests, the New York Subclass Members' interests, and the California Subclass Members' interests. Additionally, Plaintiffs' Counsel also meet the adequacy requirement of Rule 23(a)(4) because the attorneys here, Seth Lesser of Klafter Lesser, LLP, Ryan Winters of Scott & Winters Law Firm, LLC, Matthew Parmet of Parmet PC, and Andrew Frisch of Morgan & Morgan, P.A., have acted as Lead Counsel in dozens of class actions, and because Plaintiffs' Counsel have achieved a commendable result, given the complexities of this Litigation.

e. The predominance and superiority requirements of Rule 23(b)(3) are also met because the common issues identified in subsection (b) above will predominate over any individual issues in this Litigation and adjudicating all claims arising from the Kronos Outage in one class action is superior to other available methods for fairly and efficiently adjudicating this controversy.

5. Accordingly, the Court hereby preliminarily certifies the National Class, the New York Subclass and the California Subclass, as each is defined above, pursuant to Fed. R. Civ. P. 23(a) and (b)(3) for settlement purposes only in accordance with the terms of the Settlement Agreement. The Court further preliminarily appoints Plaintiffs as Class Representatives of the National Class, the New York Plaintiffs as Class Representatives of the New York Subclass, and the California Plaintiffs as Class Representatives of the California Subclass, and Seth Lesser of Klafter Lesser, LLP, Ryan Winters of Scott & Winters Law Firm, LLC, Matthew Parmet of Parmet

PC, and Andrew Frisch of Morgan & Morgan, P.A., as Class Counsel pursuant to Fed. R. Civ. P. 23(g). Plaintiffs, the New York Plaintiffs, and the California Plaintiffs, together with Class Counsel, are hereby authorized to act on behalf of themselves and members of the National Class, the New York Subclass or California Subclass, respectively, with respect to the Litigation and the Settlement Agreement.

6. The Court also preliminarily finds that Plaintiffs are “similarly situated” to the members of the FLSA Collective pursuant to 29 U.S.C. § 216(b). Accordingly, the Court hereby conditionally certifies the FLSA Collective defined above, for settlement purposes only, in accordance with the terms of the Settlement Agreement.

7. If the Settlement Agreement is terminated pursuant to the terms of the Settlement Agreement or this Court does not grant Final Approval of the Settlement Agreement, or the settlement is not consummated for any reason whatsoever, this certification of the National Class, the New York Subclass, the California Subclass, and the FLSA Collective shall automatically be cancelled and shall be void and, in such event, this Court’s certification of this National Class and the New York and California Subclasses and the FLSA Collective shall not, in any way, have any effect on Defendants’ rights to challenge the propriety of any class or collective action certification for any purpose. Additionally, Plaintiffs, pursuant to the terms of the Settlement Agreement, reserve all of their rights, including the right to continue with the litigation of the claims asserted in this Litigation should the Settlement Agreement not be consummated.

**Notice to National Class, California and New York Subclasses and FLSA Collective**

8. The Court authorizes notice of the settlement set forth in the Settlement Agreement to the members of the National Class, the New York Subclass, the California Subclass, and the FLSA Collective, as the proposed settlement falls within the range of reasonableness, and may be adjudicated fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23 and the Class

Action Fairness Act of 2005 (“CAFA”), and the applicable standards for approval of an FLSA Collective settlement, upon final consideration thereof at the Final Approval Hearing provided for below.

9. The content of the proposed Settlement Notice to the members of the National Class, the New York Subclass, the California Subclass, and the FLSA Collective, attached as Exhibit B hereto, is hereby approved. The Settlement Notice is accurate, objective, informative and will provide the members of the National Class, the New York Subclass, the California Subclass, and the FLSA Collective members with the information necessary to make an informed decision regarding their participation in, exclusion from, or objection to the Settlement Agreement and its fairness.

10. The method of disseminating the Settlement Notice to be sent to the members of the National Class, the New York Subclass, the California Subclass and the FLSA Collective, as set forth in the Settlement Agreement, is hereby found to be the best practicable means of providing notice of the settlement under the circumstances and, when sent, shall constitute due and sufficient notice of the proposed Settlement and the Final Approval Hearing to all members of the National Class, the New York Subclass, the California Subclass, and the FLSA Collective entitled to participate in the settlement, in full compliance with the notice requirements of Fed R. Civ. P. 23, due process, the Constitution of the United States, the laws of the New York and all other applicable laws. The Parties are directed to ensure that the Settlement Notice, in substantially the same form as is attached as Exhibit B hereto, is disseminated to members of the National Class, the New York Subclass, the California Subclass and the FLSA Collective according to Section 12 of the Settlement Agreement. Such Settlement Notice shall issue on or before the date that is twenty-one (21) days from the entry of this Preliminary Approval Order.

**Appointment of Settlement Administrator**

11. The Court approves and appoints Angeion Group (the Settlement Administrator”) to serve as the Settlement Administrator in accordance with the terms of the Settlement Agreement and this Order. By agreeing to serve as the Settlement Administrator, Angeion Group voluntarily agrees to subject itself to the jurisdiction of this Court and waives any jurisdictional objections.

12. The Settlement Administrator shall perform the duties of the Settlement Administrator set forth in the Settlement Agreement, including but not limited to the distribution of the Settlement Notice to members of the National Class, the New York Subclass, the California Subclass, and the FLSA Collective and all other duties enumerated in Section 10 of the Settlement Agreement.

13. Prior to the Final Approval Hearing, the Settlement Administrator shall provide to the Parties a sworn statement attesting to compliance with the terms of the Settlement Agreement, and the Parties shall file that statement with the Court.

**Requests for Exclusion from the National Class**

14. Members of the National Class may request exclusion from the National Class (and thereby concomitantly from the New York and California Subclasses, if applicable) by sending a written request for exclusion to the Settlement Administrator, at the address indicated in the Settlement Notice, via First-Class United States mail, postage prepaid, so that it is postmarked by forty-five (45) calendar days after the date on which the Settlement Administrator mails the Settlement Notice to the members of the National Class, in accordance with the terms of the Settlement Agreement. In order to be effective, this request for exclusion must expressly state the individual’s desire to be excluded from the Settlement and shall be in writing and state the full name of the individual seeking to be excluded and include his or her current address, work location,

and signature. Any request for exclusion from the National Class shall be deemed to also request exclusion from any applicable State Subclass. Requests for exclusion that do not include all required information, or that are not timely received by the Settlement Administrator, will be deemed null, void, and ineffective.

15. By opting out, any member of the National Class who previously filed a consent form to join the FLSA Collective shall be deemed to have withdrawn that consent and will no longer be a member of the FLSA Collective for any purpose, including this Settlement Agreement.

16. Members of the National Class may not exclude themselves by filing requests for exclusion as a group or class. They must individually and personally submit a request for exclusion and timely transmit it to the Settlement Administrator in accordance with the terms of the Settlement Agreement.

17. Any member of the National Class who does not properly and timely opt-out shall be bound by all the terms and provisions of the Settlement Agreement, the Final Approval Order, and the releases set forth therein, and will be deemed to have waived all objections and opposition to the fairness, reasonableness, and adequacy of the Settlement Agreement, whether or not such person objected to the Settlement.

18. All members of the National Class who submit valid and timely notices of their intent to be excluded from the National Class, including but not limited to those who are also members of the FLSA Collective, shall not: (i) have any rights under the Settlement Agreement; (ii) be entitled to receive a settlement payment; (iii) have a right to object to the Settlement; and (iv) be bound by the Settlement Agreement or any Final Approval Order.

19. Any member of the National Class who does not elect to be excluded from the National Class may, but need not, enter an appearance through his or her own attorney. Members

of the National Class who do not enter an appearance through their own attorneys will be represented by Class Counsel.

**Objections by Members of the National Class to the Settlement**

20. Any member of the National Class who does not opt-out from the National Class may object to the Settlement or any portion thereof, or any other matters to be considered by the Court during the Final Approval Hearing (as indicated in paragraph 23, below) by sending a written objection to the counsel for the Parties and to the Court, as indicated in the Settlement Notice, via First-Class United States mail, postage prepaid, so that it is received or postmarked by forty-five (45) calendar days after the date on which the Settlement Administrator mails the Settlement Notice to the members of the National Class, in accordance with the terms of the Settlement Agreement. In order to be effective, this writing must express the individual's desire to object to the Settlement and must be signed by the National Class Member and include his/her/their name, current mailing and email addresses, and phone numbers, and state all grounds for the objection. If the objector is represented by counsel, the written objection must state so and provide the name and address of the counsel. If the objector intends to appear at the Final Approval hearing by himself/herself/themselves or by counsel, the written objection must also so state whether the objector or his/her/their attorney is making an appearance.

21. No member of the National Class shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) or to object to any matters to be considered by the Court at the Final Approval Hearing (as specified in paragraphs 23-24 below), and no written objections or materials submitted by any member of the National Class shall be received or considered by the Court at the Final Approval Hearing, unless such written objections or materials comply with the requirements of this Order, are timely filed and served as set forth

herein and as detailed in the form of Settlement Notice. Any member of the National Class who seeks to object but fails to comply with the requirements of this Order will be deemed to have waived any right to object.

**Other Related State Court Actions**

22. During the pendency of the foregoing settlement process, and to promote an orderly settlement process and thereby to protect the Court's jurisdiction over the proposed settlement and settlement class and the subclasses, any pending action filed in any state court that asserts any FLSA and/or state law wage and hour claims relating to the Kronos Outage against any Defendant is hereby enjoined from proceeding during the pendency of this Court's approval process. This injunction would apply hereafter to any newly filed case but specifically applies, at present to, *William Muller and Jamaar Codrington, et al. v. PepsiCo, Inc., New Bern Transport Corporation, Bottling Group, LLC, et al.*, Case No. CGC-22-597909 (San Francisco Superior Court). At the Final Approval Hearing, this Court will consider whether and, if so, to what extent, this injunction shall continue. By this Order, counsel for Defendants are ordered to serve counsel in the *William Muller* lawsuit, just cited, with a copy of this Order within five business days.

**The Final Approval Hearing**

23. A hearing on Final Approval of the Settlement (the "Final Approval Hearing") is hereby scheduled to be held before this Court on \_\_\_\_ day of \_\_\_\_\_ 2022 at \_\_\_\_:\_\_0 \_\_.M. in Courtroom \_\_ of the The Hon. Nelson Román, Federal Courthouse, 300 Quarropas Street White Plains, NY 10601-4150. At this Fairness Hearing, the Court will determine whether: (a) the settlement set forth in the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the members of the National Class and Subclasses and the FLSA Collective; and (b) a

Final Judgment as provided in the Settlement Agreement should be entered granting final approval of the Settlement.

24. At the Final Approval Hearing, the Court shall also consider Class Counsel's application for attorneys' fees, costs and expenses and their application for Service Payments to the Class and Subclass Representatives (the "Applications"). Any Application shall be filed with the Court concurrently with the Motion for Final Approval of the Settlement Agreement, which shall be filed fourteen (14) days prior to the Final Approval Hearing.

25. The date and time of the Final Approval Hearing shall be set forth in the Settlement Notice, but the Final Approval Hearing shall be subject to adjournment by the Court without further notice to the members of the National Class other than those who are Objectors.

SO ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 2022

\_\_\_\_\_  
Hon. Nelson S. Román  
United States District Judge